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March 17, 2004

BY HAND DELIVERY

Jeff S. Jordan, Esquire
Supervisory Attorney
Central Enforcement Docket
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

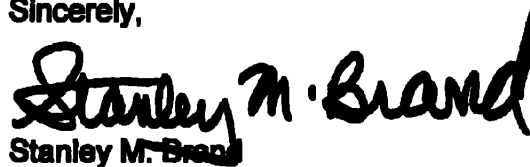
Re: **MUR 5408**

Dear Mr. Jordan:

On behalf of my clients, Rev. Al Sharpton Presidential Exploratory Committee, and Andrew A. Rivera, as Treasurer, we hereby enclose our response to the complaint in the above referenced matter under review.

If you should have any questions, please feel free to call me at (202) 662-9700.

Sincerely,


Stanley M. Brand

SMB:mlc
Enclosure

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FEDERAL ELECTION COMMISSION
OFFICE OF CENTRAL ENFORCEMENT

29044232887

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of:

**Rev. Al Sharpton Presidential
Exploratory Committee
and
Andrew A. Rivera, as Treasurer¹**

Matter Under Review 5408

Respondents.

**RESPONSE OF REV. AL SHARPTON PRESIDENTIAL EXPLORATORY
COMMITTEE AND ANDREW A. RIVERA, TREASURER**

I. Introduction

On behalf of the Rev. Al Sharpton Presidential Exploratory Committee, and Andrew A. Rivera, as Treasurer (collectively, the "Respondents"), we respectfully submit the following response to the complaint filed in the above referenced matter under review ("MUR").

On February 2, 2004, the National Legal and Policy Center ("NLPC") filed the complaint that initiated this MUR. On February 9, 2004, the NLPC filed an amendment to that complaint, which included allegations not made in the original complaint (collectively, the "complaint").

In its complaint, the NLPC charged that the Respondents violated several provisions of the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA"), in

¹ The Commission's notification of the above captioned complaint listed Luis A. Miranda as treasurer to Rev. Sharpton's campaign committee. However, as of the date of this response, Andrew Rivera is treasurer of Rev. Sharpton's campaign committee.

connection with allegedly impermissible campaign support provided to the Committee and alleged failures to properly report the receipt of in-kind contributions. See Complaint at 5.

For the reasons set forth herein, we respectfully request that the Commission dismiss this complaint.

II. Complainant has Failed to Allege Sufficient Facts to upon which to Base a Reason to Believe Finding

In short, the Complainant has failed to allege sufficient facts upon which the Commission could base a "reason to believe" finding and, therefore, the complaint should be dismissed.

Upon a thorough review of the complaint, we have determined that NLPC provided no pertinent, first-hand facts in support of its accusations against the Respondents, as required by Commission rules. Instead, NLPC included what it asserts are quotes from press articles and, from these purported quotes, made unsupported allegations that the Respondents committed federal campaign finance violations. Apparently, NLPC did not include copies of the press articles with the complaint.

Without addressing the accuracy or veracity of the press articles, the Commission's policy is to require that a news clip used as a basis for a complaint be "substantive in its facts," and contain a "clear and concise statement of the acts which are alleged to constitute a violation of the Act . . ." Commission Agenda Document 79-299.

Furthermore, complaints before the Federal Election Commission must contain "a clear and concise recitation of the facts which describe a violation of a statute or regulation over

which the Commission has jurisdiction," particularly those that are based almost entirely on unsubstantiated news clips.² See 11 C.F.R. § 111.4(d)(3) and Agenda Document 79-299.

The Respondents, however, cannot determine whether the press articles cited in the complaint were "substantive in its facts," and contained a "clear and concise statement of the acts which are alleged to constitute a violation of the Act . . ." because the complaint did not include them. We believe that a complaint whose only "facts" consist of unsupported quotes does not satisfy the Commission's minimal threshold for complaint sufficiency.

Moreover, Respondents should not be required to respond to charges which cannot be verified without the Respondents conducting an independent review of press articles. This kind of "cut and paste" complaint should, therefore, be rejected by the Commission as unnecessarily burdensome for respondents.

Nevertheless, the Respondents deny violating the Act with respect to any of the unsupported allegations made in the complaint.

III. Conclusion

For these reasons, we respectfully request that the Commission dismiss this matter under review.

² The Commission should resume enforcing Agenda Document 79-299, particularly because courts will not accept news stories as evidence of a violation of federal campaign finance law and regulations. In *Federal Election Commission v. GOPAC, Inc.*, 917 F. Supp. 851 (D.D.C., Feb. 29, 1996), District Judge Oberdorfer confirmed that "a magazine article is not 'significantly probative' nor is it 'material' 'evidence on which [a trier of fact] could reasonably find'" a violation of federal campaign finance law and regulations had occurred. 917 F. Supp. at 864 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50, 252 (1986)).

Respectfully submitted this 17th day of March, 2004.

BRAND & FRULLA, P.C.
(A Professional Corporation)

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